Rice Growers Association of California (P.R.), Inc. *and* Congresso de Uniones Industriales de Puerto Rico. Case 24–CA–6163

July 31, 1991

DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

Exceptions filed to the judge's decision in this case[1] present the question whether the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to provide certain requested information to the Union.

The Board has considered the exceptions in light of the record and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(a)(5) by refusing to furnish the Union with a copy of the contract that the Respondent allegedly had entered into with a third party concerning the distribution of prepackaged rice in Puerto Rico.[2] For the reasons stated below, we find merit in the Respondent's exceptions to this finding.

The Respondent was a Puerto Rico corporation wholly owned by Rice Growers Association of California (Rice Growers) which is headquartered in Sacramento, California. For about 30 years, the Respondent handled incoming shipments of short-grain California rice from Rice Growers which the Respondent packaged and distributed in Puerto Rico. The Union had represented the Respondent's employees engaged in unloading and packaging operations since about 1969. The most recent collective-bargaining agreement between the Respondent and the Union was effective February 26, 1988, and would have expired on February 25, 1991, if the Respondent had not ceased operations beforehand.

On February 23, 1990,[3] Bill Ludwig, the director of operations for Rice Growers, came to San Juan and conducted a meeting during which he told all the Respondent's employees that Rice Growers was considering terminating operations at that plant because rice sales in Puerto Rico had substantially declined. That same day, the Respondent's attorney, Radames A. Torruella, sent a letter to Arturo Figueroa, the Union's president, informing him of the possible plant closure and suggesting that they meet to bargain about matters relating to this subject.

The Respondent and the Union subsequently met to discuss the plant shutdown on March 5, March 7, and April 20. During the March 7 meeting, Torruella informed the Union that Rice Growers had definitely decided to close the plant and that April 30 would be the last day of operation. Thereafter, the Respondent and the Union could not reach an agreement on the amount of severance pay the Respondent owed the unit employees under their collective-bargaining agreement. There is an arbitration case pending before the Arbitration Bureau of the Puerto Rico Department of Labor regarding the dispute over severance pay. A hearing in that case was postponed at the Union's request until the Board decided the unfair-labor-practice issues raised here.

On April 30, the Respondent closed its plant and permanently laid off all employees. Rice Growers, which continues to import small amounts of prepackaged rice into Puerto Rico, has entered into a contract with Casera Foods, Inc. to handle their sale and distribution. Casera Foods does not employ any former employees of the Respondent. On June 20, Figueroa wrote a letter to Steve Polich, the Respondent's former operations manager who now serves as a consultant for Rice Growers, requesting a copy of the contract between the Respondent and Casera Foods. The Respondent refused to provide the Union with that document. The sole issue raised in this case is whether the Respondent's refusal to furnish this information violated Section 8(a)(5) of the Act.

In finding that the Respondent's conduct was unlawful, the judge stressed the evidence that before the Respondent ceased operations it employed forklift operators who handled packages of rice from the time that the Respondent completed its packaging operations until the product was placed on delivery trucks. The judge found that employees of Casera Foods are performing this same work, on the prepackaged rice that Rice Growers now ships to Puerto Rico, that unit employees were arguably doing before April 30. These facts, in the judge's view, ''conceivably might give rise to a claim by displaced employees under the contract for wrongfully subcontracting out unit work.'' Because he found there was at least the possibility that the Union could have formulated a bargaining proposal leading to the revival of this limited facet of the Respondent's former operations, the judge found that under the Board's broad definition of relevance the Respondent had a duty to furnish the contract with Casera Foods to the Union. The judge therefore concluded that the Respondent violated Section 8(a)(5) by its refusal to provide the requested information.

Contrary to the judge, we find that the Respondent did not violate the Act by failing to furnish the Union

[1] On February 14, 1991, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] No exceptions were filed to the judge's further findings that the Respondent's financial statements for the years 1988 and 1989 were not germane to the Union's arbitration case involving severance pay for the unit employees and that, therefore, the Respondent did not unlawfully refuse to provide this information to the Union.

[3] All dates are in 1990 unless otherwise noted.

with a copy of the Casera contract. Based on Polich's uncontradicted testimony at the hearing, it was Rice Growers, and not the Respondent, which had entered into a contract with Casera Foods to provide for the distribution of prepackaged rice in Puerto Rico. Yet, the Union made its information request for a copy of the contract to Polich as the operations manager for the Respondent, Rice Growers' then-defunct subsidiary. The Respondent was not a party to the Casera contract, and Polich, the Respondent's operations manager prior to its closing, testified that he was not aware of the contents of a contract between Rice Growers and Casera. Further, the entity that possesses this requested information, Rice Growers, has not been joined as a party to this case.

We also stress that the General Counsel has made no effort to establish that Rice Growers and the Respondent were a single employer of the unit employees or that the Respondent had been an alter ego of Rice Growers. In the absence of any evidence showing that the preclosure relationship between the Respondent and Rice Growers met either test, we do not find that the Respondent was in de facto control of the requested information so as to create an obligation for the Respondent to provide it under Section 8(a)(5) of the Act.[4] We therefore conclude, on the basis of this record, that the General Counsel has failed to establish that the defunct Respondent had the statutory duty or even the capacity to provide the Union with a copy of the contract between its former parent, Rice Growers, and Casera Foods.[5] For these reasons, we shall dismiss the complaint in its entirety.

ORDER

The complaint in this case is dismissed.

[4] Cf. *American Commercial Lines*, 291 NLRB 1066, 1084–1085 (1988); *Food & Commercial Workers Local 1439 (Layman's Market)*, 268 NLRB 780, 781 (1984).

[5] Based on our disposition of this case, we find it unnecessary to pass on the judge's finding above that the information sought was relevant to the Union's role as the collective-bargaining representative of the unit employees.

Stanley Orenstein, Esq. and *Efrain Rivera-Vega, Esq.*, for the General Counsel.

Francisco Chevere, Esq. and *Radames A. Torruella. Esq.*, of San Juan, Puerto Rico, for the Respondent.

STATEMENT OF THE CASE

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me at Hato Rey, Puerto Rico, on an unfair labor practice complaint,[1] issued by the Regional Director for Region 24, which alleges that Respondent Rice Growers Association of California (P.R.), Inc.,[2] violated Section 8(a)(1) and (5) of the Act. More particularly, the complaint alleges that the Respondent failed and refused to produce relevant data which the Union demanded in order to fulfill its duty of representing the members of a bargaining unit in a plant which the Respondent closed on April 30, 1990. The complaint originally addressed a refusal to provide five items of requested information: financial statements for 1988 and 1989, disclosure of the names of the title holders of the Respondent's plant at Catano, Puerto Rico, disclosure of the names of the incorporators of the Respondent, a copy of a contract entered into by the Respondent with Casera Foods, Inc., to handle the distribution of Respondent's products in Puerto Rico after the closing of the plant, and a list of the Respondent's forklift operators who were employed on the date the plant closed. At the hearing, the Respondent produced the names of the title holders of the plant, the incorporators of the Respondent corporation, and a list of the forklift operators who worked for the Respondent on the date the plant closed. The Union was satisfied that this information complied with its request with respect to those items, so the complaint was dismissed as to them, leaving in dispute the Respondent's obligation to furnish its 1988 and 1989 financial statements and a copy of its contract with Casera Foods, Inc. As to these requests, the Respondent asserts that they are irrelevant to the Union's duty to bargain and to any issue negotiated or to be negotiated between the parties. On these contentions, the issues were joined.[3]

FINDINGS OF FACT

The Unfair Labor Practices Alleged

The Respondent is a Puerto Rico Corporation wholly owned by Rice Growers Association of California. The latter makes its headquarters in Sacramento, California. For nearly 30 years, the Puerto Rico affiliate has handled incoming shipments of short-grain California rice which is sold on the island under the brand name Sello Rojo. To process this incoming rice, the Respondent maintained a dock and factory at Catano, a part of the Port of San Juan, where it offloaded bulk shipments of rice that arrived in ships. It then packaged them in 3- or 5-pound bags for sale in Puerto Rico. It employed 54 bargaining unit employees in the unloading and packaging operation. Its sales and distribution activities were handled by nonunit employees or by independent contractors. Since about 1969, the Respondent maintained a series of collective-bargaining agreements with the Union. The most recent contract was effective February 26, 1988, and was scheduled to expire on February 25, 1991.

[1] The principal docket entries in this case are as follows:

Charge filed by Congreso de Uniones Industriales de Puerto Rico (the Union) against the Respondent on May 17, 1990; amended charges filed by the Union against the Respondent on June 19 and 29, 1990; complaint issued against the Respondent by the Regional Director of Region 24 on June 29, 1990; Respondent's answer filed on August 10, 1990; hearing held in Hato Rey, Puerto Rico, on December 3 and 4, 1990; briefs filed with me by the General Counsel and the Respondent on or before January 28, 1991.

[2] The Respondent admits, and I find, that it is a Puerto Rico corporation which, until April 30, 1990, was engaged in the manufacture, sale, and distribution of rice and related products. In the course and conduct of this operation, it annually purchased and received goods and products at its Catano (San Juan), Puerto Rico, plant directly from points and places outside the Commonwealth of Puerto Rico which were valued at an excess of $50,000. Accordingly, the Respondent is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of the Act.

[3] Errors in the transcript are noted and corrected.

On February 23, 1990, Bill Ludwig, the director of operations for Respondent's parent corporation, came to San Juan from California and addressed a meeting of all employees, unit and nonunit alike, at the Catano plant. Speaking with the assistance of local counsel Francisco Chevere, who acted as interpreter, Ludwig told the employees that the Company was considering the closing of the plant because rice sales in Puerto Rico had dropped precipitously in recent years. He attributed the drop in sales to a change in consumer tastes. According to Ludwig, Puerto Ricans were moving away from purchases of the short-grain rice which Respondent was selling under the Sello Rojo label and were beginning to buy large quantities of medium-grain rice. The latter is produced in Arkansas, Louisiana, and elsewhere in the south and is being marketed on the island by the Respondent's competition.

During this meeting, the Union's general shop steward, Luis Melendez, asked Ludwig if employees could do anything to forestall the plant closing. Ludwig replied that unfortunately they could not because the problem related to a decrease in sales and, change in consumer taste rather labor costs. On the same day, a letter was sent to Arturo Figueroa, the president of the Union, informing him of the possible closing of the plant and suggesting that a meeting might be held to negotiate the question of the closing and matters related to it.

Meetings relative to the closing of the plant were held on March 5 and 7 and April 20 at the office of the Conciliation and Arbitration Bureau of the Puerto Rico Department of Labor. Torruella told Figueroa the same thing that he had said in previous correspondence, namely that there was a possibility that the plant might close. As requested in previous correspondence, Figueroa brought with him to the meeting a list of written proposals relating to closing which he gave to Torruella. It read:

> I. Alternative
>
> A. Have the company pay severance and that salaries and other fringe benefits be reduced to 25%, except the health plan and bonus, if the company or any other employer continues operating.
>
> II. Alternative
>
> A. That all benefits established in the collective bargaining agreement be paid and that these be continued for a year, once severance payment has been made.
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> B. That any employer who packages rice in this mill's packing facilities recognize the union and the present employees.[4]

In this discussion, in later discussions, and throughout the litigation of this case frequent reference was made to the 2800-hour provision found in article XXII of the collective-bargaining agreement. It is entitled ''Mechanization and Elimination of Positions'' and reads:

> 1. The Company may eliminate personnel permanently due mechanization when it deems so convenient, but will be compelled to pay to each permanent employee terminated due to this reason one hundred eighty (180) hours for each year of continuous service with the Company, up to a total maximum of two thousand eight hundred (2,800) hours.
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> 2. This same procedure will apply when the Company deems it convenient and in fact does eliminate a position permanently for reasons not connected with mechanization.

It was well understood by both parties that most, if not all, of the members of the bargaining unit had over 15.5 years of service with the Respondent, so any applicability of article XXI would result in most instances in a payment of the maximum amount allowed in section one of that article. Torruella made no response to the Union's demands other than to say that he would transmit them to his client.

At the March 7 meeting, Torruella informed all present that the Company had in fact decided to close the plant and that April 30 would be the last day. Most of this meeting was taken up in a side-bar discussion between Figueroa and Torruella. Both men have been engaged in labor relations in Puerto Rico over a long period of time and have handled many matters with each other. In their private discussion, Torruella expressed to Figueroa his legal opinion that the mechanization clause of the contract did not apply to plant closings and that the Company was not obligated to apply its provision to the matter at hand. He distinguished the provisions of the Rice Growers contract from provisions of another contract the two had administered at another employer's place of business where a mechanization clause was applied to a plant closing situation.

Torruella made the suggestion to Figueroa that it would be easier to take his proposal for a full 2800-hour severance payment to company officials in California if it could be presented on the basis of a deferred payment. He suggested 40 percent on the closing of the plant and 30 percent at two other intervals spread over a year. Figueroa preferred to wait 6 months following the closing and then pay the full amount in a lump sum. Figueroa conceded at the hearing that Torruella had made it clear that, in discussing the terms of a severance payment, he had no authority to make an offer on behalf of his client and was not in fact doing so. Torruella did say he would try to sell the idea to company officials. Figueroa said he would present both propositions to his membership and inform Torruella of their feelings. At this meeting, Figueroa asked company representatives for the names of the incorporators of the business and the names of the owners of the company property at Catano. It is disputed whether, at this time, he also asked for the 1988 and 1989 financial statements in issue in this case.

A membership meeting did take place about a week later, at which time the members of the bargaining unit expressed a preference for a single lump sum payment 6 months after the date of the plant closing. This preference was communicated by Figueroa to the Company.

The parties met again on April 20. On this occasion, the Respondent was represented only by Chevere. Chevere told Figueroa on this occasion that the Respondent had what it felt was a reasonable proposal to make on the subject of severance pay. Figueroa replied that he did not want to hear the proposal and insisted on the payment of the full 2800 hours of severance pay mentioned in the mechanization clause of

[4] The stilted nature of the contents of the written documents recited herein is due to the fact that they are English translations of the originals. All negotiations between the parties, both oral and written, were conducted in Spanish.

the contract. He threatened to go to court or to arbitration if the full amounts were not paid. There is no dispute that, at this meeting, Figueroa asked Chevere for a copy of the Respondent's 1988 and 1989 financial statements. There is also no dispute that the Respondent never communicated to the Union, either at the April 20 meeting or thereafter, the severance pay proposal which it attempted to make at the outset of the discussion.

On April 25, Figueroa followed up his oral demand for financial statements with a letter to Torruella incorporating the same demand in writing. In another letter, dated April 30 and written to Steve Polich, the Respondent's operations manager, Figueroa made a demand for a full application of the mechanization clause to all laid-off employees and again threatened to go to arbitration if the Company failed to comply. In a letter dated April 1 which Figueroa wrote to Ramon Hernandez, the Respondent's general manager, he claimed that the Respondent was importing prepackaged rice from the United States which was formerly packaged at Catano by unit employees. He asserted that this was a violation of the contract and made a claim for time lost by unit employees resulting from the transportation of this rice into Puerto Rico from the continental United States. The claim was made before the plant closed and referred to activities allegedly taking place while the Catano plant was still in operation.

On April 30, the Catano plant was closed and all employees, unit and nonunit alike, were permanently laid off. The plant is now inactive. The Respondent continues to import small amounts of prepackaged Sello Rojo rice into Puerto Rico from California. It has contracted with Casera Foods, Inc., a food distributor of many years experience, to handle the sale and delivery of this prepackaged material to various retail outlets. Casera performs this activity from its plant, which is located several miles from Catano. It is undisputed that Casera has not employed any former employees of the Respondent. On June 20, Figueroa wrote a letter to Polich requesting a copy of the contract between the Respondent and Casera governing the distribution of prepackaged Sello Rojo rice imported by the Respondent from California. The Respondent refused to provide it.

There is presently pending before the Arbitration Bureau of the Puerto Rico Department of Labor an arbitration case, filed by the Union against the Respondent, in which it is demanding the application of the mechanization clause of the contract to the April 30 layoff. The Union also made other demands for contractual payments which are not a part of this proceeding including a demand for payment of a Mother's Day bonus. Part of the arbitration case has been settled but the claim for 2800 hours of severance pay for each qualified employee is still pending. A hearing in that case was postponed at the request of the Union to await the outcome of the Board case.

Analysis and Conclusions

In determining the duty of an employer to provide information to its collective-bargaining representative the Board stated in *Buffalo Concrete*, 276 NLRB 839, 840 (1985), enf. in pertinent part 803 F.2d 1333 (4th Cir. 1986):

> In determining the relevance of the requested information, a liberal discovery-type standard is used. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). Thus, some information is presumed relevant, such as information concerning the terms and conditions of employment of employees represented by the union. *Ohio Power Co.*, 216 NLRB 987 (1975), enfd. 531 F.2d 1381 (6th Cir. 1979). The presumption of relevance does not apply to information concerning financial data. The relevance of that type of information must be established by the union.
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> In evaluating whether the financial information requested by the Union was relevant and the Respondents were therefore obligated to provide it, we agree with the judge that such an evaluation must start from the following premise:
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> > [W]hen an employer objects to a union's bargaining demands on the basis that it is unable to afford the cost of the proposal, it is under a duty to let the union see its books and records so that the union can verify the truthfulness of the employer's contention. [276 NLRB at 838.]
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> The key determination in this case is thus whether the Respondents refused to agree to the Union's contract proposals because of an inability to afford the cost of the proposal or because they did not want to pay the cost of the proposal.

There are no special words or phrases which must be uttered before an employer's stated inability to pay the cost of a proposal triggers an obligation defined in *Truitt*. For instance, a claim that the adoption of a union proposal would make it noncompetitive in the market place has been deemed to be the equivalent of a plea of poverty. As former Chief Justice Burger wrote, in a decision rendered when he was a member of the U.S. Court of Appeals for the District of Columbia Circuit:

> The Company asserts that a claim of inability to pay is not shown when the Company merely claims that the increases will prevent it from competing. But the liability to compete is merely the explanation of the reason why the Company could not afford the economic benefit. [*Steelworkers v. NLRB (Stanley Artex Windows)*, 401 F.2d 434 (D.C. Cir. 1968).]

For similar instances when other bargaining positions have been deemed to trigger a *Truitt* obligation, see *Monarch Machine Tool Co.*, 227 NLRB 1880 (1977); *Stanley Building Co.*, 166 NLRB 98 (1967); *Graphic Communications Local 5 v. NLRB*, 538 F.2d 496 (2d Cir. 1976); *Latimer Bros.*, 242 NLRB 50 (1979). No company officials or representatives in this case ever actually said that the Respondent could not afford the Union's 2800-hour severance pay proposal. It is the contention of the Union and the General Counsel that what the Respondent said and what the Respondent did was the equivalent of a plea of poverty.

While the reasons given by several company spokesmen for the closing of the plant may have some remote bearing on the precise question at issue in this case, the fact that the Respondent was closing its plant because of economic difficulties and shortfalls in sales does not directly address its duty to provide financial information in response to the Union's severance pay demand. What the General Counsel must establish is that the Respondent objected to the Union's

2800-hour demand because it could not meet that specific demand, not that the Respondent was closing its plant because of severe economic constraints which it had disclosed even before the Union had formulated that demand. This is necessarily so, since a *Truitt* obligation is, in essence, an assertion by the Supreme Court that good-faith bargaining requires, in certain instances, the verification of an economic position taken during bargaining. What was and still is at issue in the bargaining controversy between these parties is severance pay, not plant closing. If the Respondent had a *Truitt* obligation, it was with respect to its position on severance pay, not plant closing.

The statements by company officials relied on by the General Counsel in support of his contention that there is a verification obligation are, for the most part, statements regarding the plant closing, not severance pay. The principal statements made by the Company in response to the severance pay demand came from Torruella and Chevere. Torruella's statement to Figueroa that the Company was not obligated to make the 2800-hour severance payment set forth in the mechanization clause of the contract was a legal opinion based on a reading of the contract, not an assertion on his part that the Company could not meet such an obligation if it was disposed to do so. Chevere's later statement that the 2800-hour provision was a ''heavy'' one is likewise a description of the obligation, not an assertion that it could not be met. When Torruella conveyed his opinion to Figueroa concerning the applicability of the contract provision and received from Figueroa his first demand for full severance payments, Torruella's immediate response was that he would try to sell the idea to his client and that his task would be much easier if payments could be arranged on an installment basis rather than in a lump sum. Far from being a plea of poverty, it was a plea for reasonableness, an implied assertion that the Respondent not only could meet but might actually meet the demand if only the Union would exercise some patience. Such statements are at odds with the basic premise of a verification requirement and demonstrate that the Respondent never said, even by implication, that it was financially unable to meet Figueroa's demand.

While the Board will direct the production of information which is designed to aid a union preparing and presenting either a grievance or arbitration case, the information in question must be relevant to the case. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *Montgomery Ward & Co.*, 234 NLRB 588 (1978). The Union has filed, and there is now pending, before an arbitrator a claim that the Respondent is obligated, pursuant to provisions of its collective-bargaining agreement, to make to each laid-off employee a severance payment as defined by the mechanization clause of the contract. The arbitrator who is scheduled to hear the case has never determined that the 1988 and 1989 financial statements at issue in this case are relevant to the case before him, although such a determination on his part is not necessarily dispositive of the question before the Board. What is determinative of the relevance of such information in the arbitration case is the fact that the outcome of that case depends on the legal obligations of the Respondent set forth in that contract, not on whether the Respondent is or is not financially able to meet those obligations. It is no defense to the Respondent in the arbitration case that it cannot afford to comply with the contractual provisions at issue therein if, in fact, it has such an obligation. Accordingly, what the 1988 and 1989 financial statements may or may not disclose concerning its financial health have no possible bearing on the questions to be decided by the arbitrator. In light of these considerations, much of the complaint which alleges that the Respondent violated Section 8(a)(1) and (5) of the Act by its refusal to produce requested financial statements must be dismissed.

With regard to the production of the Casera contract, other considerations come into play. As noted, supra, a wide-ranging discovery-type view of relevance is the one that must be applied in resolving this issue. Figueroa's reasons for wanting the Casera contract were not well articulated, either at the hearing or elsewhere. In his June 20 letter to Polich, in which a demand for the contract was first made, Figueroa merely states that ''the unionized employees who used to work as forklift operators for the distribution of packaged rice have been affected by the unilateral action you have taken.'' His testimony at the hearing indicated a belief that the Casera contract might establish that Casera was a successor or alter ego of the Respondent who could be interpleaded in the pending arbitration case and stand financially responsible for any award the arbitrator might make. At the hearing in this case, counsel for the General Counsel indicated that he was not claiming that Casera was a successor to the Respondent. Indeed, he would be in a poor position to do so, since Casera has no financial connection with the Respondent, has hired no supervisory or unit employees from the Respondent's plant, and operates a business which is largely unrelated to the work which the Respondent did. Under no applicable theory of Board law could Casera be deemed a successor or alter ego to the operation which closed at Catano on April 30.[5]

The fact that the potential relevance of the Casera contract to the bargaining relationship between the parties was poorly spelled out does not mean that it does not exist. At Catano, the Respondent employed forklift operators who, among other things, handled packages of rice between the time they were processed and the time they were placed on trucks for delivery. A suggestion to this effect is contained in the above-noted June 20 letter. Even though the Respondent's rice which now comes into the Casera warehouse is packaged in California, it must be unloaded in Puerto Rico, placed in storage, moved about the warehouse, and loaded on trucks. This is the same work that unit employees were arguably doing before April 30. These facts conceivably might give rise to a claim by displaced employees under the contract for wrongfully subcontracting out unit work. There is a possibility, depending on the costs experienced by Casera and reflected in the requested contract, that the Union could formulate a bargaining proposal leading to the revival of this limited facet of the former operation at the Respondent's plant and the rehiring of a few unit employees by the Respondent. Again, none of these possibilities may exist. However, under the broad definition of relevance contained in Board law, there is enough in this record to warrant a finding that the contract between the Respondent and Casera Foods, Inc., respecting its ongoing handling of the Respondent's product in Puerto Rico is relevant to the bargaining relationship between the parties to this case. See *Brooklyn Gas Co.*,

[5] The General Counsel took the opposite position in its brief.

220 NLRB 189 (1975), and case cited therein. Accordingly, I conclude that, by its failure to provide the Union with its contract with Casera Foods, Inc., the Respondent violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Rice Growers Association of California (P.R.), Inc., is now, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Congreso de Uniones Industriales de Puerto Rico is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Respondent at its rice mill located in Catano, Puerto Rico, but excluding all other employees, guards, and supervisors, as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material, the Union has been the exclusive collective-bargaining representative of all employees of the Respondent employed in the unit found appropriate in Conclusion of Law 3, within the meaning of Section 9(a) of the Act.

5. By failing and refusing to furnish the Union with a copy of its contract with Casera Foods, Inc. the Respondent violated Section 8(a)(1) and (5) of the Act. The aforesaid unfair labor practice has a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend to the Board that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. I will recommend that the Respondent be required to furnish to the Union copies of all present and past contracts that it has entered into with Casera Food, Inc., relating to the storage and distribution of rice imported by the Respondent into Puerto Rico. I will also recommend to the Board that the Respondent be required to distribute the usual notice informing employees of their rights and the results of this case. Since the Respondent has closed its Catano plant and has no other place of business in Puerto Rico, a conventional notice posting requirement would serve no purpose in this case and would, in effect, nullify the benefits which notice posting is supposed to provide to employees. Accordingly, I will recommend that the Respondent be required to mail signed copies of the attached notice, in Spanish, to all Catano employees at their last known address.

[Recommended Order omitted from publication.]